Petition

81-1604

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No. _____

In the Supreme Court of the United States

Special Term or October Term, 1982

SAMUEL G. CHIA,

Petitioner,

v.

WESTINGHOUSE ELECTRIC,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

For the Ninth Circuit

SAMUEL G. CHIA
1901 Vallejo St., Apt.5
San Francisco, CA 94123

February 11, 1982

QUESTIONS PRESENTED

1. Whether Petitioner's legal rights were violated causing heavy losses in evidence, thereby weakening his case which was then lost due to fraud and false promise, all of which crippled Petitioner's very strong prima facie case and violated Petitioner's legal rights?

2. Whether the Ninth Circuit Court misruled in considering Petitioner an "Elevator Mechanic" and not the Apprentice Petitioner was hired as, and granted no rehearing for correction of job classification and its requirements?

3. Whether the Ninth Circuit Court should accept Trial Court's findings and rulings against U.S. Supreme Court Law?

4. Whether lower courts misruling Petitioner unqualified for elevator apprentice was due to courts' failures

to examine Petitioner's background, which included applied college training, previous employment as a Defense, Aerospace and Technical worker, Petitioner's seniority as apprentice, and Petitioner's previous record of a six million dollar savings in disqualifying fraudulent government contractors?

5. Whether the said court misruled by misstating Petitioner's request for removal of his lawyer and the introduction of taped conversations of co-workers, and the subsequent refusal to reopen an additional trial after fraud was evidenced?

6. Whether the Circuit Court should consider valid the evidence of a discriminatory witness, a witness on record with EEOC for misfiring minorities, and subsequently use his evidence to determine that Petitioner "endangered

other's lives?"

7. Whether it was proper that the inferior courts refused to accept EEOC evidence, determination, etc., which was in compliance with the U.S. Supreme Court principles?

8. Whether the Circuit Court erred in declaring "no merit" when there was sufficient evidence and cause proving fraud and irregularities?

9. Whether it was unusual and improper that the Circuit Court accepted incompetent and contradictory evidence from the District Court in making their ruling, and that the lower court's findings were not clearly erroneous?

10. Whether the Circuit Court should accept documents falsified by Respondent's lawyer, including U.S. Supreme Court Memorandums in Brief, etc.?

11. Whether a cover-up of frequent

use of racial slurs on Petitioner should not be considered by the inferior courts as a violation of Title VII?

LIST OF ALL PARTIES

Parties Petitioner:

Samuel G. Chia

Parties Respondent:

Westinghouse Electric

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

For the Ninth Circuit

The Petitioner, Samuel G. Chia, respectfully prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Ninth Circuit entered on October 15, 1981.

OPINIONS BELOW

The Court of Appeals entered its opinion affirming the decision against Petitioner in this Title VII case on October 15, 1981. A copy of the opinion, which has not yet been reported, is attached in Appendix hereto.

JURISDICTION

On October 15, 1981 the Court of Appeals entered judgement affirming the decision against Petitioner in the said Title VII case. No order has been issued for paying any costs upon objection of fraud conducted by Respondent's side up to this date. Petition for rehearing on basis of misrulings as a result of misfinding on job classification and its requirements was denied on November 16, 1981 (A10). The jurisdiction of this court is invoked

under Title 28, United States Code, Section 1254 (1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> No person shall...be deprived of life, liberty, or property, without due process of law;...

STATEMENT OF THE CASE

After Petitioner had completed his elevator training and electronics courses with Los Angeles Technical College, and the University of California at Los Angeles in the fall of 1970, in addition to completing a number of electronics courses in computer and microwave technologies with known colleges in southern california, Petitioner accepted Respondent's employment as probationary helper, i.e., apprentice with minimum responsibility. Petitioner had been defense and aerospace technical worker for almost a decade in which his responsibilities included the disqualification of government contractors whose purpose was to defraud the federal government, thereby endangering national defense (Exh. A. Amended Appellant's Brief and

Reporter's Transcript, page 59). Because of national cutbacks in aerospace he was forced to look for a job in the elevator field. He was given a position as elevator probationary helper, i.e., apprentice at an entry level, by Respondent. He therefore, moved from Los Angeles to San Francisco and started his apprentice position from April 1, 1971 until June 16, 1971. During this period, he received compliments from his immediate construction supervisor Edward Rynberg, Wiring Mechanic Chester Archor, and Welding Mechanic Raymond Meaney (the first and third persons were witnesses who were fraudulently omitted by Petitioner's lawyer and their tape recorded conversations proving his satisfactory performance, as well). When the Superintendent's son, Don White,

Jr. got a friend, Craig Parker, to come to work for Respondent, Don White, Jr. tried his best to transfer Petitioner to another job so that his friend would have full access to replace Petitioner's job in electrical work. Craig Parker became a maintenance mechanic later on, after the completion of elevator work in that building, eventhough Parker had much less seniority, in addition to having a criminal record (see summary Judgement Statistics).

Petitioner was laid off with misrepresentations that union men would come and he would be bumped (allegations in EEOC file, submttted to District Court N.R. 52 Civil Docket Sheet).

During the whole period, Petitioner had been slurred as "Chinaman" and "Chinaboy," for which Respondent's

officials knew (Exh. N of Supplementary Brief of rehearing), but took no steps to eliminate the illegal practice constituting a violation of Title VII (Exh. A., EEOC determination in trial). It was forwarded to local Fair Employment Practices (FEP) to process. FEP completed its sloppy investigation within an hour and concluded that Respondent had a cutback, which was contradictory, and later denied by the Superintendent, White (RT 287). White stated that there was no summer hiring in 1971 but there were hirings in 70 and 72 only for which he needed to layoff petitioner.

Then, EEOC began its extensive investigations for at least 70 hours, interviewing the immediate mechanic supervisor with personal knowledge of

Petitioner's job performance, collecting records of minority hiring from Respondent, the ways Respondent treated Petitioner, the reasons for Respondent's laying off Petitioner, etc. and found that Petitioner's layoff by Respondent Westinghouse Electric, was in substantial part because of his national origin and the charge was true that Petitioner had been treated so desparately in comparision to the white apprentices in compliance with the Supreme Court definitions as noted in McDonald v. Santa Fe Trail Transportation Co. 427, U.S. 273-283 (1978), which states that a criterion on employment must be applied alike to members of all races, or it is a violation of Title VII.

White employees similarly injured were not subject to be critized. Petit-

ioner was the only Oriental to be picked on, further, Petitioner's work was more than satisfactory, and his academic background, including university education in Electrical Engineering was superior to fourteen other apprentices. Respondent hired only a single Oriental among 105 craftsmen in the subject year 1971, as admitted by its EEO-1 in violation of the Affirmative Action Law (Exh. 7) which was further in compliance with the Supreme Court rulings on International Brotherhood of Teamsters v. U.S.A. ---U.S.---, 97 S.Ct. 1843, 1856-57 N.20 (1977) it has been held to be reversible error to refuse to consider such evidence in individual cases of discrimination. Donaldson v. Pilsbury, 554 F.2d 825, 8th Cir. (1977), Cert. denied --- U.S.---15 FEP cases 1184 (1977), a five

page determination was issued 4 together with its file containing taped transcripts of Edward Rynberg and Raymond Meaney to prove that Petitioner's work was also satisfactory in construction and welding. Bernard Dubbert misfired Andrew Grath, a black minority for discrimination.

When Mr. Grath complained and talked with the man higher than Duddert, he was rehired. Because Respondent refused concilation offered by EEOC and the conciliation was closed in 1975, Petitioner filed his case in the District Court in 1976.

The District Judge began to deprive Petitioner's counsel interests by ordering him to appear for deposition (NR 26, 27) without representation with no cause, then used it against Petition-

4 exh.8 in trial

er on findings 15, though it was impermissible to use under evidence rules 403 and 404 at a later time in question, and irrelevant as well.

As the trial approached, Petitioner's legal rights were gradually deprived in full. Petitioner's trial lawyer suddenly[1] refused to subpoena two important witnesses, i.e., the construction immediate supervisor, Edward Rynberg, and the Welding Mechanic, Ray Meaney, as stated previously, to prove his satisfactory job performance in these two fields, together with the tape recorded conversations.[2]

1/ Exh.N of Amended Brief of Appellant.
2/ See EEOC file or SJM statistics, or Exhs.B - C of Brief for rehearing (FRAP 40).

Therefore, Petitioner sought in vain to have his dishonest lawyer removed before trial when she refused to substitute out.

Petitioner reluctantly wrote to the District judge[3/] requesting his help and allowing him to submit evidence himself if the lawyer fraudulently leaked the tape recordings as evidence. The trial judge returned the letter in the open court and answered that Petitioner should not write him such a request denying both (RT 26-27), accepting the false promise and did not want Petitioner to have a stronger case. After trial and before the conclusion of the case, Petitioner was denied to reopen an additional trial to append the fraudulent leak of important evidence by a new substitute lawyer (NR 97) without reason.

3/ Exh. M of Amended Brief of Appellant.

Petitioner's legal rights were deprived in full unlawfully. In the trial, Mr. Chester Archor, the Wiring Mechanic, was alone called to testify that Petitioner's work was completely satisfactory in wiring as an apprentice (RT 108-109). It was not unusual to get a slight on-the-job-injury, and there were widespread injuries in that work force (RT 120).

The status of the case had reached prima facie here because the superintendent just expected to hire a probationary helper who could satisfy his immdeiate mechanic supervisor (RT 275). This helper could then work with that particular mechanic in order to specialize in that particular field (RT 276). It genereated different mechanics in the fields like Chester

Archor, a wiring mechanic (RT 100), construction foremen like A.S. Plunkett (RT 264), service mechanics like James K. White (RT 264, vol. 3), welding mechanics like Ray Meaney (Exh. C, Appellant's Brief), even construction helper was also classified, like Harold Nettle, Jr. (RT 264, vol. 3). They only did the work related to their own field, not all fields (RT 275, 276).

Note that there were two more immediate supervisors who could be subpoenaed to testify and give personal knowledge that Petitioner's work was also satisfactory in construction as well as welding; however, this lawyer fraudulently dropped these two witnesses, and she did not even use the tape recorded conversations. Petitioner was not allowed to produce the evidence

himself. His case was therefore fatally weakened. Mr. Andrew Garth testifeid clearly that during 1971 to 1976 Respondent hired a single oriental in the elevator industry for a period of six years (RT 142). The hiring status was so discriminatory that the establishment of discrimination should be beyond dispute; however, the inferior courts just refused to consider the violation of Affirmative Action Laws in conflict with the U.S. Supreme Court rulings in International Brotherhood of Teamsters v. U.S.A., Supreme Ct. 1843, 1856-57, N-20 (1977). Also, Alameda Legal Aide v. U.S. Chamber of Commerce, Supreme Ct. #79-1424. This violation can still be good for consideration evn now as Respondent is a multibillion dollar contractor.

Mr. Garth testified that on-the-job injury took place very often(RT 141, 142). He, himself, lost the tip of a finger, and was bumped for many months. To this time, there has been no adverse action taken against him. However, Petitioner's slight injury was picked on for transfer from station to station till his layoff. Moreover, as to job performance, Bernard Dubbert, with poorer abilities and mechanical attitude could refuse to listen to his superiors' instructions, mis-cut seven floor plates when installing an escalator, and waste considerable manpower, materials and time to redo the job (RT 130-133) was subjected to no adverse action by Respondent. This is in conflict with the U.S. Supreme Court principles noting that a criterion on employment must be

applied alike to members of all races, or it is a violation of Title VII, and noted on McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273-283 (1978). Also, in McDonald-Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established standards for proving a prima facie case of employment discrimination. This basic standard has applied equally to cases of discharge.

There were tens of similar samples as pointed out in Petitioner's briefs in the Appeal that white employees were similarly, or even much badly situated had never been critized. Petitioner was the only one to be picked on for adverse actions. It clearly shows that the inferior courts had ruled against the Supreme Court laws further misused fourth-hand, in-

competent, and fully contradictory evidence was used to conclude this subject case because Superintendent Don White, Sr. and construction foreman Paul Sabin, Respondent's witnesses whom Petitioner' had never worked with before, therefore had no personal knowledge of, their testimonies were taken to conclude the case. Further, construction man was not qualified to critize Petitioner's electrical work.

Testimonies varied from the time Petitioner was laid off, to the trial's completion. An EEOC interview differed, and summary judgement motion and trial indicated that they were never reliable evidence. Direct exams were cancelled by the cross-examination due to full contradictions that Respondent had provn nothing in the trial.

Yet, the Court of Appeals still cited that the findings of fact were not clearly erroneous, that the inferior courts had never exercised any normal common sense in this subject case.

Moreover, the inferior courts accepted testimonies from a witness, Dubbert, who had misfired minorities for discrimination (EEOC records), when the courts should have barred him. The inferior courts had further failed to consider that a cover-up of frequent use of racial slurs on Petitioner constituted a violation of Title VII. All witnesses in the trial did tell they heard the frequent calls of "China-man" and "Chinaboy," and Respondent's manager K.W. Snow admitted that he knew of this, but denied the violation in the EEOC file. The inferior courts

should also know of it. Petitioner was not allowed to argue in the trial and his right to change lawyers had already been deprived. Petitioner's good technical standing with the U.S. government position never received any credit on the subject case.

Julia A. Molander, lawyer of Respondent, had misrepresented Appelle's brief (on page 16), and open argument of Reporter Transcript. She stated that the U.S. Supreme Court wanted discrimination to be critically proven by motive 431 U.S. at 335 N.15 (No year)& (nT347) and that the District Court had been under the influence of Molander's misrepresentation as shown in the decision and Petitioner had pointed out in his brief. No response had been shown in the Appellate Circuit.

The trial judge stated in the argument that, "I can, with the best will on earth, call somebody 'Nigger-boy' and mean no offense by it" (RT 348). He also criticized Respondent's witness Paul Sabin, "come the day that he's fired and replaced by a relative of White's, you may hear about his being called 'Indian' racial slurs!" (RT 349).

"You (Petitioner) don't neces-arily start out there (Westinghouse), I assume you can get your card anywhere and you could get your card at Otis Elevator, be a card-carrying employee later hired on at Westinghouse has cleared anyone through the probation-ary period merely because he is a card-carrying helper and mechanic at Westinghouse (meaning, even you were discriminated against, you have no case)

(RT 331, 332). Probationary employees, as I said earlier, can be discharged for any reason whatsoever." (RT 350)

Statements like that from the District judge would have indicated that he would harbor discriminators, rather than enforce the Title VII. The Ninth Circuit did nothing to regulate the practice that the inferior courts need supervisory instructions from this high court.

Conclusion

For the foregoing reasons, Petitioner respectfully submits that a writ of certiorari should issue to review the judgment of the U.S. Court of Appeals.

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Feb. 11, 1982.

Appendix

Fingings of fact, conclusion of law and order of the U.S. District Court.

1. Defendant Westinghouse Electric Corporation ("Electric") is a Pennsylvania corporation doing business in the State of California and within the Northern District of the United States District Court of California.

2. Westinghouse Elevator ("Elevator") is a wholly owned subsidiary of Electric engaged in installation and servicing of elevators and electric stairways.

3. The San Francisco office of Elevator is located at 650 Harrison Street, San Francisco. This office covers all of Northern California. At the time plaintiff was employed, the San Francisco office had approximately 160 employees.

4. Plaintiff Samuel Chia, aman of Chinese ancestry, became a probationary employee of Elevator on April 1, 1971.

5. On March 22, 1971, plaintiff submitted an application for employment in Elevator with the San Francisco office of Westinghouse

Electric Co. His application indicated that he had some experience with electrical work and had taken two courses in elevator rheory. Plaintiff had never installed an elevator, nor had he had any experience as a construction worker. Plaintiff failed to recite that he had been terminated for cause from several prior jobs.

6. Donald E. White, Sr., then District Superintendent at the San Francisco office, interviewed plaintiff. Mr. White told plaintiff that the position of elevator helper would involve wiring and construction work and that if hired, he would be a probationary employee for six months as required by union contract On the basis of plaintiff's alleged background in electrical work and in elevators, as he had represented on his application, Mr. White offered plaintiff a position as a Probationary Helper. Plaintiff accepted the position as a Probationary Helper and began work on April 1, 1971.

7. Duting the two and one-half months plaintiff was employed by Elevator, he performed the

duties of a Probationary Helper, the entry level position at Elevator. These job duties consist of rail work, assembly work, mechanical work, and wiring work. Probationary Helpers help clean, carry, load, unload, handle, hoist, lower, install and align guide rails which form the elevator tracks. They build foundations for the elevators. They install and assemble all machineroom equipment. They assemble car frames, cabs, doors, grating and screens, and all other equipment related to the elevator. Probationary Helpers also install wiring and make all electrical connections for the operation of the elevators and escalators.

6. During plaintiff Chia's employment, he was under direct and indirect supervision of Donale White, Sr., District Superintendent, as well as the following Supervisors, Foremen, or Leadmen under his direction: Paul Sabin and Bernard Dubbert. He was personally observed and evaluated bythese Supervisors who communicated their evaluations and comments to District Superintendent White.

9. In May 1971, plaintiff incurred an injury

to his foot while on the job because he recklessly placed himself in a precarious position on a load of rails being uncoupled on an upper floor of a building under construction. When plaintiff returned to work after his foot injury. District Superintendent White and Supervisor Sabin made an effort to find plaintiff another position for which he might be better suited. He was trahsferred to the Montgomery BART Station, where Elevator was constructing the escalators. His work there also proved unsatisfactory, and he was returned to the West Coast building site after a week. District Superintendent White then placed plaintiff in wiring. While one of the mechanics with whom he worked testified that he saw nothing wrong with plaintiff's work, plaintiff's foremen reported to the District Superintendint that plaintiff's wiring work was slow and inefficient.

10. On or about June 15,1971, a reduction in work force was called for, and some Probationary Helpers were terminated. Distric Superintendent White decided to include

plaintiff in the lay-off due to his unsatisfactory performance.

11. Plaintiff was informed, and knew, that the Standard Agreement between Westinghouse Elevator Co. and the International Union of Elevator Constructors("IUEC"), Local 8, provided that Probationary Helpers, during their six month probationary period, could be terminated for any reason, with or without cause with no reason assigned therefor. The Standard Agreement further previded that if a Probationary Helper did not display sufficient aptitude, he must be discharged during the probationary period.

12. After his termination, plaintiff filed charfes of discrimination with the California Fair Employment Practices Commission ("FEPC") and the Equal Employment Opportunity Commission ("EEOC") alleging that he was terminated due to his national origin. The FEPC issued its determination on October 27, 1971, finding that the evidence did not sustain the complaint and that plaintiff was laid off because of a cutback in staff. Two years later, on

October 15, 1973, the EEOC issued a resonable cause determination. After an additional lapse of three years, the EEOC mailed plaintiff a right to sue letter on October 12, 1976. Plaintiff filed the suit on December 23, 1976.

13. After plaintiff's termination. Elevator hired several collage students, all the sons of Elevator employees, as Probationary Helpers, but none of these was expected to become a permanent employee, and all returned to their schools after the summer work. These students were assigned to work on the Bart station job. They were not hired as replacements for plaintiff.

14. Five or six other Probationary Helpers were terminated at approximately the same time as plaintiff Chia, some of whom had been employed by Elevator for a longer period of time than plaintiff.

15. Plaintiff's job history supports the contention that he was an unsatisfactory employee. Plaintiff was terminated for cause by at least two employers prior to his employment by Elevator, and by at least eight em-

ployers subsequent to his employment by Elevator. All of these positions involved electrically related work, and at least one of these positions was in the elevator construction field.

16. There is no evidence to support plaintiff's assertion that Elevator subjected him to racial harrassment during his employment. He contends that his co-workers called him "Chinaman", but there is no creditable evidence that any of his supervisors called him such names, and no evidence that he ever reported such name calling to any supervisor.

17. It appears from the evidence that plaintiff Samuel Gene Chia's discharge was not in whole or in part, because of his national origin.

18. Inasmuch as plaintiff Samuel Gene Chia was not discharged for unlawful motives, findings on the damage question are unnecessary and irrelevant.

Conclusion of law

1 The court has jurisdiction over this

action pursuant to Section 706(f)(3) of Title VII of the Civil Act of 1964, as amended, 42. U.SC. § 2000e-5(f)(3).

2. The Venue in this District is proper pursuant to §706(f)(3).

3. Defendant had the right and under the contract with IUEC, Local 8, the duty to discharge a probationary helper who did not display sufficient aptitude.

4. The decision of the district superintendent to include plaintiff in the required layoff was based entirely upon lawful and proper considerations, to wit: Plaintiff's supervisor's reports that plaintiff's job performance was poor and that he lacked mechanical aptitude such decision was not in any part based upon plaintiff's race, national origin, or any other inappropriate or unlawful consideration.

5. Plaintiff having failed to prove the allegations of his complaint by preponderance of the evidence, judgment shall be entered for defendant and against plaintiff.

6. Defendants shall have thier costs of suit

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herein; each party shall pay its own attorney's fees.

Sep. 14, 1979. /s/ Robert H. Schnake
U.S. District Judge

Opinion of the U.S. Court of Appeals for ninth Circuit. (Filed Oct.15, 1981)

NO. 79-4770

BEFORE: SCHNACKE, District Judge;
WRIGHT, CHOY and BOOCHEVER,
Circuit Judges.

Following a trial on Chia's action for employment discrimination, the district court determined that appellant had not made a prima facie case. See McDonald Douglas Corp. V. Green, 411 U.S. 792, 802(1973); Flowers V. Crouch-Walker 552 F. 2d 1277 7th Cir.(1977). On appeal he makes, among others, these contentions; (1) appellee's bribed his lawyers;(2) the the court erred in not requiring his attorney to introduce taped conversation of his co-workers; (3) the

court's findings were incorrect; (4) the court called him "Chinese," whereas he is a naturalized citizen; (5) it failed to respond to his letters complaining of attorney misconduct, discovery problems, etc.; (6) it improperly denied his motion for new trial; and (7) it improperly failed to rest its decision on an EEOC report.

None of these arguments has merit. The court's findings of fact are not clearly erroneous and are supported by substantial evidence. The court below found that he was not qualified as an elevator mechanic, he performed poorly, endangered the lives of his fellow workers, and was discharged for cause and not because of his racial origin. Judgment affirmed

Order denying Rehearing (Nov. 16, 1982) No. 79 4770. Before Wright Choy & Boochever Circuit Judges. The panel as constituted in the above case has voted to deny the petition for rehearing. The petition for rehearing is denied.

TABLE OF AUTHORITIES

McDonald v. Santa Fe Trail Transportation Co., 427 U.S. 273 at 283 (1978) Supreme Court noted that employment criterion must be applied alike to members of all races, or it is a violation of Title VII.

McDonald-Douglas Corp. v. Green, 411 U.S. 792 (1973) The Supreme Court established the standards for proving a prima facie case of discharge.

Furno Construction Co. v. Waters, 438 U.S. 567 (1978). The central issue of the case is whether the employer is treating some employees less favorably than others because of their race, color, or national origin. It is of no legal consequence that the employee was a probationary employee who could be discharged at will.

Taplor v. Safeway, Inc., 524 Fed. 2d 263 (10th Cir. 1975).

U.S. Chamber of Commerce v. Legal Aide, Alameda County, Calif., 9th Cir; #74-2954, Supreme Ct. #79-1424.

International Brotherhood of Teamsters v. U.S., U.S. 97 S. Ct. 1843, 1856-57 N. 20 (1977).

It is not sufficient to rebut a prima facie of discrimination to show that the employee had a previous history of unsatisfactory job performance. East v. Romine, Inc., Supra.